

**MINUTES OF THE
JUDICIARY INTERIM COMMITTEE**

Wednesday October 21, 2015 – 1:15 p.m. – Room 25 House Building

Members Present:

Sen. Mark B. Madsen, Senate Chair
Rep. LaVar Christensen, House Chair
Sen. Lyle W. Hillyard
Sen. Ralph Okerlund
Rep. Fred C. Cox
Rep. Bruce R. Cutler
Rep. Brian M. Greene
Rep. Craig Hall
Rep. Brian S. King
Rep. Merrill F. Nelson
Rep. Dixon M. Pitcher
Rep. V. Lowry Snow

Rep. Norman K. Thurston
Rep. Mark A. Wheatley

Members Absent:

Sen. Luz Escamilla
Sen. Stephen H. Urquhart
Rep. Keven J. Stratton

Staff Present:

Mr. Gregg Girvan, Policy Analyst
Ms. Esther Chelsea-McCarty, Associate General Counsel
Ms. Lucy W. Daynes, Legislative Assistant

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Committee Business

Chair Madsen called the meeting to order at 1:39 p.m. Chair Madsen noted that the agenda item entitled “Law Enforcement Exclusionary Evidence Rule” would not be considered during the meeting. Rep. Stratton was excused from the meeting.

MOTION: Rep. Cutler moved to approve the minutes of the August 19, 2015, meeting. The motion passed unanimously.

2. Guardianship of Disabled Adults

Rep. Cox described the purpose of draft legislation "Disabled Adult Guardianship Amendments" (2016FL-0016/002) and answered questions from the committee. The committee discussed amending the draft legislation to remove the IQ requirement and to define "intellectual disability." The committee also suggested allowing a qualifying individual to retain a small amount of assets and still meet the provision's financial eligibility requirements for waiving the right to counsel.

Chair Madsen asked Rep. Cox to revise draft legislation "Disabled Adult Guardianship Amendments" for consideration during the November interim meeting.

3. Sunset Review: Alternative Dispute Resolution Act

Rep. Christensen explained the importance of Alternative Dispute Resolution (ADR) programs.

Mr. Girvan presented "Sunset Review Process" and explained that the agency that carries out the statute under review is responsible to seek reauthorization of the statute. He also explained that the committee has several options for sunset reviews: (1) allow the program to expire, (2) reauthorize the program for up to 10 years, (3) repeal the program, (4) remove the program from the Sunset Act, or (5) improve the program.

Mr. Rick Schwermer, Deputy Administrator, Administrative Office of the Courts, described ADR programs in Utah, referencing "ADR Program Overview – FY2015," and said that the sunset only affects one section of code related to ADR programming. He said that all ADR programs administered by the courts have a success rate of at least 70% resolution through mediation. Mr. Schwermer confirmed that the courts are seeking to reauthorize the program.

MOTION: Rep. Christensen moved to recommend a renewal of Utah Code Title 78B, Chapter 6, Part 2, Alternative Dispute Resolution Act, for 10 years without amendment. The motion passed unanimously with Rep. Hall absent for the vote.

4. Death Penalty

Chair Madsen introduced the topic of the death penalty and explained that the Nebraska Legislature has recently repealed the death penalty.

Sen. Al Davis and Sen. Brett Lindstrom of the Nebraska Legislature presented to the committee through a conference call.

Sen. Al Davis introduced himself and said that he was on the judiciary committee when a bill to eliminate the death penalty was introduced in 2012. He said that during consideration of this bill, the committee heard from members of the public who supported eliminating the death penalty to decrease media coverage of convicted murderers. He added that they also heard testimony from an individual who was improperly convicted and spent time on death row.

Sen. Brett Lindstrom stated that he was originally in favor of the death penalty but was swayed by news of botched executions and individuals being released after DNA evidence proved their innocence. He said that the death penalty was not working as a policy in Nebraska. He added that the death penalty is expensive and inefficient when compared to life without parole.

Sen. Al Davis further stated that error, planted evidence, and false confessions can cause individuals to be sentenced to death. Sen. Lindstrom remarked that many sentenced individuals are on death row for decades before being executed, and added that life sentences can protect society as well as the death penalty.

Sen. Al Davis and Sen. Brett Lindstrom answered questions from the committee regarding the deterrent effect, appeal process, and cost of the death penalty.

Rep. Stephen G. Handy stated that he started a master study with the Office of the Legislative Fiscal Analyst in 2012 to evaluate the cost of the death penalty, as compared to life in prison without parole, in Utah. He said that the study found that in Utah the cost of death penalty appeals is \$1,660,000 per individual greater than the appeals cost of life in prison without parole. He noted that, for the eight individuals currently on death row, the state spends about \$1,735,000 per year on appeals. However, he explained, polls consistently show that most Utahans support the death penalty.

The committee discussed in depth the value and cost of the death penalty.

Ms. Jencie Anderson, Professor, S.J. Quinney College of Law, University of Utah, and Legal Director, Rocky Mountain Innocence Center (RMIC), said that, through the work of the RMIC in litigating innocence and wrongful conviction claims, they have encountered individuals sentenced to the death penalty who have been wrongfully convicted. She said that the error rate of wrongfully convicting

individuals to the death penalty is about 10%, and that in 2015, innocence projects across the country have proved the innocence of six individuals who were sentenced to death.

Ms. Anderson answered questions from the committee regarding RMIC cases, DNA evidence, and factors that can contribute to wrongful convictions.

Dr. Sandy McGunigall-Smith, Professor of Criminology, Utah Valley University, discussed her research doing interviews with over 300 inmates who are either on death row or sentenced to life in prison without parole. She distributed an article she coauthored, "Life Without Parole, America's Other Death Penalty: Notes on Life Under Sentence of Death by Incarceration." She said that her research indicates that life without parole is a viable alternative to the death penalty.

Mr. Ralph Dellapiana, Trial Attorney, Salt Lake Legal Defenders, and Chair, Capital Case Committee, Utah Association of Criminal Defense Lawyers, commented on the cost of the death penalty. He stated that the cost of keeping an individual on death row is three times the cost of keeping the same prisoner incarcerated in a prison's general population. He explained that the required pretrial and trial services for individuals being charged with crimes that qualify for the death penalty are extensive and costly, and that most death penalty cases don't result in an execution. He said that using the death penalty is inefficient and wastes money.

5. Other Items/Adjourn

MOTION: Rep. Cutler moved to adjourn the meeting. The motion passed unanimously with Sen. Hillyard, Sen. Okerlund, Rep. Nelson, Rep. Pitcher, Rep. Snow, and Rep. Thurston absent for the vote.

Chair Madsen adjourned the meeting at 4:14 p.m.